



Since 1894

April 28, 2022

Mr. Michael Sheats
Director, Livestock, Poultry, and Grain Market News Division
U.S. Department of Agriculture
Agricultural Marketing Service
Wash.LPGMN@usda.gov

Dear Director Sheats:

The Kansas Livestock Association (KLA) respectfully submits the following comments in response to the U.S Department of Agriculture (USDA), Agricultural Marketing Service (AMS) Listening Session on Cattle Contracts Library Pilot Program Development. KLA, formed in 1894, is a trade association representing over 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

In authorizing the Cattle Contracts Library Pilot Program in Section 779 of the Consolidated Appropriations Act, 2022, Congress simply appropriated \$1 million “for a Cattle Contracts Library pilot program that the Agricultural Marketing Service shall develop and maintain within the Livestock, Poultry, and Grain Market News Division.” The only additional condition was that the pilot “be similar, as determined by the Secretary, to the swine contract library the U.S. Department of Agriculture currently maintains pursuant to section 222 of the Packers and Stockyards Act (7 U.S.C. § 198a).” This gives AMS wide latitude to craft the pilot program. While Congress directed the program be “similar” to the swine contract library, it did not indicate the program must be the same and gave the Secretary discretion to determine the meaning of similar. KLA believes this gives AMS the ability to maintain those aspects of the swine contract library that are useful and avoid those aspects that limit the usefulness of the current swine library and in some instances might hamper market innovation.

KLA also believes that AMS should make clear to users that a cattle contract library is intended as a market transparency tool and should not be used or interpreted as a price discovery mechanism. While data reported in a cattle contract library may be used in the future to negotiate a formula agreement, the information reported should not represent actual market transactions. Contrary to what some commenters implied during the live listening session, the data in a contract library should not be real time data and should not be linked to the daily USDA Livestock Mandatory Reporting Program (LMR) daily or weekly reports for cattle.

Confidentiality Must be Ensured

First and foremost, KLA believes that any pilot program must maintain stringent confidentiality safeguards. While the goal of a contract library is to add transparency to the marketplace by making available information to the public about how final cattle prices are determined, such a tool should never disclose, directly or indirectly, either party to a contract or proprietary business information. Confidentiality of such information is required by 7 U.S.C § 1636. KLA members are concerned that if a relatively small number of contracts exist in a given region, industry participants could determine which packer has agreed to a given pricing formula with a specific feedyard. Given that current market leverage conditions favor the packing industry, if such identities are indirectly disclosed, such information could be used by a packer to renegotiate a less favorable formula agreement from the producer perspective. Therefore, KLA has a number of suggestions that AMS should implement to safeguard contract participants' identities and other proprietary information.

Report Only Market Transaction Terms

USDA should only report market transaction terms pursuant to the pilot program. Market transaction terms include those terms of a contract that determine the final payment paid to the owner of cattle, such as how the base price is determined and any premiums and discounts, freight costs, and other miscellaneous adjustments that would modify the base price to arrive at a final price. Disclosure of non-market contract information is not necessary to the underlying intent of a contract library, which is price transparency. Disclosure of contract terms that do not involve price, like animal welfare practices, financing, or environmental obligations runs the risk of disclosing personal identities and proprietary business information.

Disaggregate Formula Components

KLA prefers that market transaction terms, as described above, be reported in a disassociated manner. For example, AMS would publish, by LMR region, all base prices available among active contracts without attaching it to other adjustments in the formula. Likewise, AMS would report premiums and discounts, freight costs, and other miscellaneous adjustments separately and disassociated from the base formula. While this would not be the same as the swine contract library that publishes a final formula price that links all these components, publication in a disassociated manner would be similar in nature. Disassociated market transaction terms would provide better protection of confidential information, while still allowing market participants to see all available components of formula agreements being used in the market. KLA believes this is necessary because there may be fewer contracts offered by packers to cattle producers compared to the number of contracts in the swine industry. Fewer cattle contracts would allow contract participants to more easily be identified if the full final price formula were disclosed.

Separate Final Price Options Reported from a Single Contract

If AMS does not believe it has the latitude to disassociate the final price formula and desires to emulate the swine library more closely, KLA recommends that AMS report contracts that contain multiple final price formula options as separate final price formulas, such that the

separately reported options cannot be connected to each other in a report. For instance, in the swine contract library, some final price formulas contain multiple options reported for the same contract to settle price.¹ In the cattle industry, such options might be used to settle price based on the type of cattle delivered (i.e., black-hided, dairy-cross, hormone-free, etc.). Disclosing these contracts as one final price formula with multiple settlement options could provide enough details to the public that could allow identification of parties to the contract. To safeguard against such an occurrence, each option should be reported as a separate final price formula. This still provides the public with all information about of how final cattle prices are settled and the various formulas in use at a given time, but avoids indirectly disclosing confidential information.

Maintain Inactive Contracts

AMS should not delist inactive contract terms, but instead inconspicuously mark them as inactive. Although the swine library requires USDA to remove inactive contract price information, KLA believes the cattle market could benefit from being able to view historic formula price components as market leverage shifts. The cattle industry moves in cycles. At times, packers have market leverage, and at times, cattle producers gain more leverage. Being able to view how formula components change compared to these market cycles could provide useful information.

Searchable Database

KLA believes the information reported should be placed into a searchable database, similar to the USDA Foreign Agricultural Service's Global Agricultural Trade System. Such a database would allow market participants to search the database by region, premium or discount type, active versus inactive contracts, or other relevant categories to find information more easily. The swine library reports are not user friendly. Instead of an interactive database, the swine contract library consists of hundreds of pages of pdf files containing randomized final price formulas. Within the final price formulas, premiums and discounts and other base price adjustments are simply cross referenced to another USDA document with no further explanation of the price adjustment or even a hyperlink to the cross-referenced USDA report. These types of reports may provide skilled analyst firms, which employ teams of research personnel, data that can be reassembled into a user-friendly format, but it does not provide most swine producers with meaningful, readily discernible data when renegotiating a contract with a packer.

If there is insufficient funding to create a searchable database, summary reports should be modified from the current pdf document system used by the swine contract library. Premiums, discounts, and other adjustment to the base price should be explained or a hyperlink should be inserted to allow a producer to easily understand and identify a cross reference used for such terms. AMS should update the database on a monthly basis to reflect new market transaction terms used in contracts and update existing data as being active or inactive.

¹ See U.S. Department of Agriculture, Agricultural Marketing Service, Swine Packer Marketing Contract Summary - Iowa Minnesota, Swine or Pork Market Formula, Determination of Base Price 1490, at 1, *available at* <https://www.ams.usda.gov/sites/default/files/media/SCLCSRIAMNSPMF.pdf> (as of April 28, 2022).

Reporting of Contracts Unique to the Cattle Industry

Maintaining a database in such a way could help AMS manage the unique nature of some alternative marketing arrangements utilized in the cattle industry that are not common in the swine industry. Short-term oral formula arrangements between a cattle feeder and a packer are common. For instance, a cattle feeder may call a packer at the beginning of a week and inquire about access to a formula arrangement for that week. Under such an arrangement the cattle feeder might turn in the number of cattle the feeder will deliver that week on Tuesday. The packer then agrees to pay the cattle feeder based on that week's weighted regional cash price as reported by LMR with a standard set of premiums and discounts for quality and yield grade. This trade, by definition, is a formula trade, and not a negotiated cash or negotiated grid trade. If the database operated the same as the swine contract library, this contract would never show up in the library as it would be inactive after delivery of that lot of cattle.

Any reports pursuant to the contract library should also include the premiums and discounts associated with negotiated grid trade. While these are akin to negotiated cash trades because the base price has been determined on the day of the agreement, the manner in which the premiums and discounts are determined are not currently disclosed through LMR. Having this data in a cattle contract library to compare with formula contract premiums and discounts would be useful information to the industry and could be adapted to the database reporting mechanism described above.

Avoid Reports of Estimated Deliverables

USDA should not publish a report like the swine contract library report "Estimates of Swine to Be Delivered Under Contract over the Next Year." Unlike swine contracts, cattle contracts tend to not obligate a producer to weekly deliverable head counts to a packer. Cattle contracts tend to outline how the parties will settle the price of the cattle if a yet-to-be determined number of cattle are delivered to a contracting packer, and the day in a given week a cattle feeder would need to let the packer know how many head the feeder would like to deliver. The decision whether or not, or in what quantity, to deliver cattle under the contract is often determined by the cattle feeder on a weekly basis. For example, a pork contract might obligate a swine contractor to deliver 1,000 head per week to a packer. Conversely, a cattle contract is more likely to allow a cattle feeder the option to decide whether to deliver any number of head of cattle in a given week as long as the cattle feeder notifies the packer by a specified day early in the week. If any restrictions are placed on quantity to be delivered under existing cattle formula contracts, it will likely be a maximum limit on the number of head that can be delivered per week without specifying a minimum obligation, and the maximum limit may only apply to a certain type of cattle (e.g., dairy-cross).

These contracts are more appropriately identified as open commitments and would be common throughout the cattle industry. Given these open commitment contracts, any cattle report under the pilot program similar to the "Estimates of Swine to Be Delivered Under Contract over the Next Year" would merely be a guess on the part of AMS that could unduly influence already volatile futures markets. We strongly recommend AMS forego this report as it would provide little useful data to the industry. If AMS feels compelled by the pilot project's authorizing

language to build a “similar” report, KLA recommends AMS only report the total number of cattle covered by the contract solely committed to a packer each week within the 6-month and 12-month periods following the date of the contract in its delivery categories and create a second category within the report that simply lists the total number of contracts that are open commitments. This is similar to the approach taken in H.R. 5609, the Cattle Contract Library Act of 2021, that passed the U.S. House of Representatives on December 9, 2021, by a vote of 411 to 13.

Producer Outreach

KLA encourages AMS to set aside some funding for producer education seminars. AMS could coordinate such seminars with area university extension livestock specialists. Such outreach could also prove useful in identifying strengths and weaknesses in a pilot program, should Congress decide to permanently extend the program in the future.

Utilization of Proper Authority

Finally, Section 779 of the Consolidated Appropriations Act, 2022, did not confer upon AMS additional authority to obtain and disseminate market information. Therefore, it is KLA’s belief that AMS must rely on existing authority, primarily within LMR (7 U.S.C. § 1635 et seq.) to conduct the pilot. While section 779 directs AMS to design a pilot program similar to the swine contract library, AMS cannot rely on the authorizing language for the swine library as it is specific to the Packers and Stockyards Act and swine.

Thank you for the opportunity to provide these comments about how AMS might design a cattle contract library pilot program. KLA stands ready to answer any questions AMS might have as it completes this task.

Sincerely,



Matt Teagarden
Chief Executive Officer